IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4753 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DOLATSINHJI PRATAPSINHJI JADEJA
Versus
JAMNAGAR NAGARPALIKA

Appearance:
1. Special Civil Application No. 4753 of 1983
MR A. HAMEED KURESHI for Petitioners
MR JR NANAVATI for Respondent No. 1
Mr V M Pancholi, AGP for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 08/08/2000

C.A.V.(COMMON) JUDGMENT (per Buch, J.)

This is a petition under Article 227 of the Constitution of India challenging the judgment and order dated 20.6.1981 recorded by the learned Sessions Judge, Jamnagar in Criminal Revision Application No.31 of 1980 under which the learned Judge dismissed the said Revision and confirmed the judgment and order in Municipal Tax Appeal No.12 of 1977 dated 7.3.1980 recorded by the learned Chief Judicial Magistrate, Jamnagar.

2. The present respondent was a Municipality constituted under the Gujarat Municipalities Act, 1963 (for short 'the Act') at the relevant point of time.

3. The petitioners are the Trustees of a trust namely Rajput Seva Samaj Charitable Trust of Jamnagar. A piece of land situated near Lal Bungalow within the Municipal limits of Jamnagar belongs to the said trust. Some small houses have been built thereon. Remaining land has been leased out by the said trust to one City Construction Co. which has built flats and shops on the said land. They all have been let to different tenants by the said Company.

4. The respondent-Municipality has, thereafter, assessed the said flats and shops for the purpose of property Tax. Thereafter the respondent also assessed the said land for the said purpose and issued a bill to the petitioner since it was noticed that there were 28 tenants including the said Company. It was found that the said trust was earning rent amounting to Rs. 82,332/per annum from which 10 per cent deduction, as usual, was allowed and hence, annual letting value in respect of the land in question was accordingly fixed and bill was issued.

5. The petitioner preferred the aforesaid appeal and Criminal Revision Appeals against the said bill. It was mainly contended there that when the respondent issued bill of property tax to these tenants, it covered the tax on land also and hence the land could not be taxed again. Both the Courts negatived the said contention. The Municipal Tax Appeal as well as the Criminal Revision Appeals both were turned down. Hence this petition.

6. It has been mainly contended here that the tax recovered by the respondent includes the tax on the land and hence the land cannot be taxed again. That

therefore, the judgment and order of the two courts below are illegal and deserve to be set aside. The Municipal Tax Appeal as well as the Criminal Revision Appeals both were turned down. Hence this petition.

7. We have heard the learned Advocates for the parties and have perused the papers.

8. The learned Chief Judicial Magistrate as well as the learned Sessions Judge have recorded concurrent findings of facts that while assessing the buildings i.e. flats, shops etc. the respondent has not considered the land and hence the land is not being taxed twice.

9. It is very clear that the land is owned by the petitioners. The petitioners have been earning rent separately in respect of their land. The tax is being sought by the respondent on the basis of the rent recovered or recoverable by the petitioners from their tenants. There is absolutely nothing on record to hold that the land or value of the land has been considered by the respondents while assessing the building i.e. the flats-shops etc. When the rent for the land is recovered separately, the payment of property tax thereon cannot be avoided.

10. While assessing the land the respondent has considered the actual rent received by the petitioner-trustees in respect of the land. There the rent paid or payable by the tenants of buildings has not been taken into account at all.

11. In other words, the buildings have been assessed separately without having regard to the rent payable and paid for the land. At the same time, the land has been separately assessed by the respondent without having regard to the rent paid or payable for the buildings. The tax assessed on the land may be required to be shouldered by the petitioners since they earn rent on the land.

12. In other words, neither the buildings nor the land has been taxed twice. Neither of them is required to pay double amount of tax. Building occupiers are not taxed for the land and land owners are not taxed for the buildings.

13. Land is also a property and hence it can be taxed. The learned Advocate for the petitioners could not show that the land could not be taxed. The main ground of attack on tax is that when the building is

taxed, the building includes the land. But that is not so. Both carry separate contracts of payment of rent and these contracts have been considered by the respondent for assessing them for the purpose of tax. In some cases, building may include the land below it. But here the facts are different. The land and the buildings have been separately let and they fetch separate amount of rent under separate contracts.

14. Learned Advocate for the petitioners has contended that the respondent-Municipality is not proved to have framed rules for levying tax on the property and unless the rules are produced and proved, tax cannot be levied, demanded or collected from the owners of the property within the limits of the Municipality. On going through the judgment of the learned Chief Judicial Magistrate as well as the judgment of the learned Sessions Judge, we noticed that the aforesaid contention has not been raised by the present petitioners in those two matters. Though this is a writ petition filed by the petitioners, it is ultimately to challenge the judgments and orders of the two courts below. In that view of the matter, when the aforesaid contention does not appear to have been taken up before the two courts below, it would not be possible for this Court to entertain the said plea taken for the first time before us in this extra ordinary jurisdiction.

15. Another contention raised on behalf of the petitioner is that the respondent Municipality may collect the tax on the different lands under occupation of the persons who may have pleaded their plea on such land but at the same time, the argument is that the Municipality should levy tax on each piece of land separately and there cannot be a collective levy of tax on the entire land. For the said purpose, learned Advocate for the petitioner has placed reliance on a decision in the case of Sholapur Municipality v. Shankar Sheshbhat Ambalji, reported in 23 BLR 1018. There the observation is that even if the Municipality has levied rate, they will have to do so on each plot underneath each building and not on the whole survey numbers. Firstly, this point was not agitated before the two courts below and there was no allegation before the two courts below that the respondent has levied consolidated tax on the entire land and in fact the respondent-Municipality should have assessed each plot separately for levying of tax. This point also was not taken up before the two courts below. Therefore, it would not be open to the petitioners to raise the said issue for the first time before this Court. It is to be

seen that this Court is not sitting as Court of appeal over the decisions of the courts below. Under the aforesaid circumstances we are of the view that the principles enunciated in the aforesaid decision of Sholapur Municipality's case (supra), cannot be mutatis mutandis apply to the facts of the case before us. We are not inclined, therefore, to consider the aforesaid aspects of the case in absence of any such pleadings or proof before the two courts below. Therefore, we are of the view that the aforesaid two points also do not come to the rescue of the petitioners.

16. In the facts and circumstances of the case, we are of the opinion that the learned Advocate for the petitioners could not convince us on the point that the land in question has been subjected to tax twice. We are of the opinion that when the land and the buildings have been separately let and when they fetch separate rent, there is nothing wrong or illegal to consider them separately for the purpose of taxation. In other words, the learned Chief Judicial Magistrate as well as the learned Sessions Judge have committed no error or illegality in holding that the land in question has not been taxed twice. We have no hesitation in confirming the said findings of the said two Courts. There is no other point argued before us. In that view of the matter, the present Special Civil Application is meritless and hence it is required to be dismissed.

17. This Special Civil Application is accordingly dismissed with costs of the respondent. Rule is discharged.

[M H Kadri, J.]

[D P Buch, J.]

msp.